

EXHIBIT A

Picard v Wilenitz

Telephone Conference 1/5/2017

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES INVESTOR PROTECTION :
CORPORATION, : Adv. Pro. No.
 : 08-01789 (SMB)
Plaintiff-Applicant, : SIPA LIQUIDATION
-against- : (Substantively
 : Consolidated)
BERNARD L. MADOFF INVESTMENT :
SECURITIES, LLC, :
 :
Defendant.
-----x
In Re: :

BERNARD L. MADOFF, :

Debtor. :
-----x
IRVING H. PICARD, Trustee :
for the Liquidation of : Adv. Pro. No.
Bernard L. Madoff Investment : 10-04995 (SMB)
Securities, LLC, :
 :
Plaintiff, :
 :
-against- :
TRUST U/ART FOURTH O/W/O :
ISRAEL WILENITZ, et al., :

Defendants. :
-----x

TRANSCRIPT of telephone conference as
taken by and before MONIQUE VOUTHOURIS, Certified
Court Reporter, RPR, CRR and Notary Public of the
States of New York and New Jersey, on Thursday,
January 5, 2017, commencing at 11:00 a.m.

Picard v Wilenitz

Telephone Conference 1/5/2017

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1 B E F O R E:

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23 For a number of defendants

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1 ARBITRATOR MAAS: This is Judge
2 Maas.

3 MS. CHAITMAN: Hi, Judge, how are
4 you?

5 ARBITRATOR MAAS: Very well.

6 Happy New Year.

7 MS. CHAITMAN: You too. You too.

8 MR. HUNT: Good morning, Your
9 Honor. Dean Hunt, Marie Carlisle and Ted Jacobs
10 are on for the Trustee, and our court reporter
11 is also on the line.

12 ARBITRATOR MAAS: Somebody else
13 just joined us or is that the whole crew?

14 MR. HUNT: That's a new person.

15 ARBITRATOR MAAS: Is there
16 somebody other than the court reporter,
17 Ms. Chaitman, and Mr. Hunt, Mr. Jacobs and
18 Ms. Carlisle on the phone?

19 MS. CHAITMAN: Greg Dexter from my
20 office is going to be joining us. I don't hear
21 him yet.

22 ARBITRATOR MAAS: Okay. Do you
23 want us to wait or --

24 MS. CHAITMAN: No, no, we don't
25 need to wait.

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1 Judge, I don't know how you want
2 to do this, but I have a couple of points I
3 would like to make about the orders that were --
4 that were filed.

5 (Mr. Dexter joins the telephone
6 conference.)

7 ARBITRATOR MAAS: Hi, Mr. Dexter.

8 MS. CHAITMAN: Greg, are you on?

9 MR. DEXTER: I'm on, Helen. Good
10 morning.

11 ARBITRATOR MAAS: Good morning.

12 Is there anybody else who has joined? Okay.

13 Before you do that, let me just
14 make a couple of points, and I would imagine
15 that the orders will be the focus of some
16 attention this morning. I sent them out in
17 non-PDF form because I wanted to get them out to
18 you and I was having some trouble dealing with
19 the filing mechanism, but I think I've now
20 straightened that out such that I should be able
21 to get orders once they are drafted into PDF
22 form and onto the Bankruptcy Court ECF docket in
23 fairly short order.

24 Also, I know that the Trustee
25 drafted a proposed order with respect to some of

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1 the things we discussed at the December 13th
2 conference, probably in an effort to goose me
3 along, possibly because judging from the length
4 of some of the orders Judge Bernstein signed, I
5 assume that the Trustee has routinely drafted
6 orders.

7 It was always my practice on the
8 bench to draft my own orders. So while I'm
9 certainly open to having suggestions as to
10 language, and I'm sure we'll discuss that today,
11 I prefer to draft my own orders.

12 In drafting the order that relates
13 to the three defendants, Train Klan, of the
14 group DiGiulian and Benjamin, and particularly
15 with regard to the stipulation, and, frankly,
16 although Ms. Chaitman may disagree, erred on the
17 side of favoring the defendants such that if
18 something was not explicitly agreed to on the
19 record at the conference, I didn't make the
20 assumption that stipulations that had been
21 arrived at necessarily applied.

22 So that the net effect of that was
23 that only Train Klan was included in my order as
24 an entity or a group of people who had
25 stipulated to certain facts, although I know

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1 Ms. Chaitman disagrees, but at least some of
2 those facts were stipulated.

3 So, with those preliminary
4 findings, let me turn to you, Ms. Chaitman.

5 MS. CHAITMAN: Okay. So I
6 didn't -- the good news is on the Perlman order,
7 which simply said that by January 3rd I would
8 advise the Trustee which of the defendants will
9 stipulate to the accuracy and completeness of
10 columns 1 through 5, I didn't have any comments
11 on that.

12 I did, in fact, you know, I
13 responded to that, you know, in the context of
14 writing to you, so I laid out exactly what each
15 defendant is able to stipulate to and what each
16 defendant is unable to stipulate to.

17 With respect to the order which
18 begins with the Train Klan caption, if we -- if
19 we look at paragraph 2 on the general ruling,
20 you say that, in this paragraph 2, the second
21 paragraph, in connection with any motion
22 throughout this trial the defendant, B, concedes
23 that the funds reflected in column 5 -- oh,
24 concedes that the funds reflected in column 5 of
25 Exhibit B were withdrawn from the defendants'

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1 BLMIS account and transferred to another account
2 held by or for the defendants' benefit. Nobody
3 stipulated to that.

4 That is -- what Exhibit B is is a
5 schedule of the Trustee's view of deposits and
6 withdrawals solely with respect to the account
7 holder. It was not -- it was not a stipulation
8 as to any subsequent transfers and --

9 ARBITRATOR MAAS: I don't -- let
10 me interrupt you for a second because I don't
11 read the language that I used that way. It did
12 come from the Trustee, and I understand there is
13 a fair amount of caution on both sides. But I
14 looked at the transcript again this morning,
15 bear with me a second, and I'm looking at page
16 84 of the transcript, and it's not the language
17 that I used in the order. Let me just see here.

18 I don't have the right -- yeah,
19 here it is. It's we're talking I believe about
20 Train Klan, and Mr. Hunt said, "The initial
21 transfer is the withdrawal. It can be the
22 withdrawals. So they're saying that they gave
23 value for the withdrawals."

24 I'm skipping a little language.
25 Ms. Chaitman, "The document

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1 related to the withdrawal is the check from
2 Madoff, which the Trustee has. We're
3 stipulating that we got those withdrawals."

4 That's, in effect, all I was
5 trying to say, which is that the account holder
6 received the funds --

7 MS. CHAITMAN: Well, but it was --

8 ARBITRATOR MAAS: -- and perhaps
9 correctly, on the transfer to another account --

10 MS. CHAITMAN: Right. See, I
11 never said that, and I couldn't possibly
12 stipulate to that. I mean, why don't we just
13 say and received by the --

14 ARBITRATOR MAAS: By the
15 defendants?

16 MS. CHAITMAN: -- by the BLMIS
17 account holder?

18 ARBITRATOR MAAS: I don't have a
19 problem with that.

20 Mr. Hunt, or anyone else on the
21 other side?

22 MR. HUNT: That's fine.

23 ARBITRATOR MAAS: Okay. I guess
24 what I will do is issue an amended or corrected
25 order.

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1 MS. CHAITMAN: Yeah, let's go
2 through the rest of the issues and maybe we can
3 clean them up.

4 ARBITRATOR MAAS: Sure.

5 MS. CHAITMAN: In paragraph 6 on
6 page 4, it says: Within ten days after the
7 entry of this order, the defendants shall
8 produce any documents within their possession
9 that relate to any remaining affirmative
10 defenses that the defendants assert. Any such
11 documents that the defendants have failed to
12 produce within that time frame may not be used
13 by the defendants for any purpose in connection
14 with any motion practice, trial or hearing --
15 hearing or trial, rather.

16 ARBITRATOR MAAS: Right.

17 MS. CHAITMAN: I'm concerned about
18 that language for this reason. As you may
19 recall, Judge Maas, the -- Judge Bernstein has
20 allowed us to depose Mr. Madoff pursuant to a
21 fairly complicated procedure. And after much
22 debate, what he held was that fact discovery
23 would remain open for purposes of the Madoff
24 deposition and possibly with respect to any
25 ensuing discovery. In other words, if Madoff --

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1 if Madoff's testimony leads for me to depose
2 someone else, then we would have that discovery.

3 So there is a whole body of third
4 party discovery, to say nothing of the discovery
5 that the Trustee has only now begun to produce
6 in response to your order.

7 ARBITRATOR MAAS: I think that is
8 dealt with by paragraph 7. All I was trying to
9 say in 6, and I thought we had discussed this
10 distinction at the hearing, is if you have it
11 sitting in a file cabinet today, and it relates
12 to an un-withdrawn affirmative defense, you have
13 to produce it.

14 If it's subsequently acquired,
15 whether it's from the Trustee or from DTC or
16 wherever, it falls within paragraph 7.

17 MS. CHAITMAN: Within paragraph 6.
18 If we could just clarify that. I'm just
19 concerned, Judge, because if you read this, I
20 just don't want to be in a position where three
21 years from now I'm trying to reconstruct what
22 happened. You know --

23 ARBITRATOR MAAS: Well, I'm still
24 missing what the problem is. If Mr. Madoff is
25 deposed let's say a third time, and he says, oh,

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1 yes, I forgot to tell you in addition to the
2 documents in the Lipstick Building, I had an
3 office in Switzerland where I kept documents,
4 and then somehow those documents are retrieved,
5 paragraph 6 doesn't preclude you from using
6 those documents.

7 Paragraph 7 says once you get
8 them, you have to make them available to the
9 other side within ten days.

10 So I just don't see the issue,
11 particularly as clarified by the discussion
12 we're having right now.

13 MS. CHAITMAN: Here is my concern,
14 and maybe I'm being overly cautious, at the
15 present time we've produced the documents that
16 we believe relate to the affirmative defenses.

17 However, there is a whole body of
18 information that we're just now beginning to
19 explore, which is the documents relating to
20 transactions which occurred prior to 1992.

21 Now, it may be that there is a
22 document that we have which will relate to an
23 issue I have not yet identified. So I wouldn't
24 have produced it because I didn't realize it was
25 relevant, but it may become relevant.

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1 ARBITRATOR MAAS: Am I going to
2 hear from Trustee's counsel on this?

3 MR. HUNT: I disagree with
4 everything she said. I think the order is clear
5 on its face and doesn't need to be changed.

6 MR. JACOBS: And also I would add
7 to that, Your Honor -- this is Edward Jacobs --
8 in addition to that, any type of -- I can't
9 conceptualize any type of document that may fall
10 under that category that Ms. Chaitman just
11 enumerated that wouldn't already be requested
12 and relevant to the case pursuant to our
13 discovery requests.

14 So if any such documents relating
15 to the defendants' BLMIS activities or
16 investments are in their possession, they need
17 to be produced.

18 MR. HUNT: I agree with that. I
19 agree with that.

20 ARBITRATOR MAAS: Well, I
21 recognize the theoretical possibility.

22 I would imagine for your 92
23 clients, Ms. Chaitman, that each of them has a
24 relatively small group of documents that they
25 have relating to Madoff. At best, they have the

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1 monthly statements, maybe some deposit and
2 withdrawal records, but we're not talking about
3 millions of documents per individual or even
4 probably thousands of documents per individual.

5 So I'm going to adhere to
6 paragraphs 6 or 7, notwithstanding which if you
7 end up in the sort of circumstance that you just
8 described, you can always make an application to
9 Judge Bernstein, or if I'm still involved at
10 that stage, to me. But I think we're dealing
11 with something totally theoretical.

12 MS. CHAITMAN: Okay. If you can
13 move now to page 5, paragraph 2 with respect to
14 DiGiulian --

15 MR. HUNT: Can I just make one
16 comment before we get to page 5 on page 4, Your
17 Honor?

18 ARBITRATOR MAAS: Sure.

19 MR. HUNT: The only comment that
20 we have on the order is in paragraph B5, the
21 cross-reference to paragraph A1 I believe should
22 be A2.

23 ARBITRATOR MAAS: Hang on. I
24 think it's just a typo. You're absolutely
25 correct.

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1 MR. HUNT: And with respect to
2 that paragraph, we agreed that Train Klan agreed
3 to the stipulation set forth in paragraph A2,
4 but in Ms. Chaitman's December 29th letter she
5 indicated that they could not agree to
6 paragraphs 1 through 3 because the Trustee had
7 manipulated facts concerning the date of the
8 deposits and withdrawals, and I just want to
9 confirm that, in fact, Train Klan stands by its
10 stipulation with respect to columns 1 through 5.

11 MS. CHAITMAN: Well, again, this
12 only goes to the dates, because we have evidence
13 where the Trustee has interpreted dates in a way
14 which is, in my opinion, inconsistent with the
15 law, so that's a narrow exception to the general
16 stipulation. And, you know, the facts are the
17 facts. I'm not going to waive a defense --

18 MR. HUNT: I guess the question
19 for the Court or for Your Honor is I just want
20 to confirm that with respect to Train Klan the
21 stipulation is accurately reflected in paragraph
22 A2.

23 ARBITRATOR MAAS: Well, in effect,
24 as to Train Klan, as opposed to the other two
25 defendants we were talking about as part of that

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1 package motion, I've rejected what Ms. Chaitman
2 was asserting, so I'm holding Train Klan to the
3 stipulation in paragraph A2, which my reading of
4 the transcript is that Ms. Chaitman agreed to
5 that. I'm not letting her back out of it.

6 As to the other two defendants, I
7 thought the transcript was more equivocal. So,
8 as you saw in the order, I haven't held them to
9 that.

10 MR. HUNT: Thank you, Your Honor,
11 for that clarification.

12 MS. CHAITMAN: Okay, Judge --

13 ARBITRATOR MAAS: We're on page 5,
14 Ms. Chaitman?

15 MS. CHAITMAN: Yes, page 5,
16 paragraph C1, what you had said at the hearing
17 that we had was that the defendants would
18 produce the first two pages of the tax return
19 and then the schedule that related to the Madoff
20 income.

21 The order, however, is not so
22 limited. In other words, the way I read the
23 order is if they invested, you know, through
24 Bear Stearns or Goldman Sachs, and they had
25 Schedules B and D relating, or D and E relating

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1 to any of those, they would have to produce
2 those as well, and I don't know whether that was
3 your intent.

4 If it was, I would certainly --

5 ARBITRATOR MAAS: I'm limiting the
6 amount of material that needs to be produced.
7 There is a confidentiality order, and I think
8 that the Trustee and the Trustee's experts are
9 entitled to enough documentation so they can
10 make heads and tails out of what it is that is
11 being alleged with respect to capital gains
12 taxes.

13 MS. CHAITMAN: So you're saying --
14 you're including in this capital gains from
15 other investments?

16 ARBITRATOR MAAS: Well, I'm not
17 allowing, as we discussed at the hearing,
18 redactions on relevance grounds, so --

19 MS. CHAITMAN: Or on privacy, or
20 on privacy. I mean --

21 ARBITRATOR MAAS: Yeah.

22 MS. CHAITMAN: -- you're basically
23 giving -- you're basically giving them the
24 ability, then, to determine what assets they
25 could levy on, that's -- that's my objection.

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1 ARBITRATOR MAAS: No, I don't
2 think that's the case at all, because there is
3 lots of assets that won't be reflected, A. B,
4 the capital gains that are going to be shown,
5 first of all, relate to a period many years
6 before the Trustee will ever get to the stage of
7 trying to go after assets.

8 A lot of these schedules will show
9 purported sales. They are not going to show
10 purchases. So they are not going to give the
11 Trustee a picture, certainly not an accurate
12 picture, of what assets a particular individual
13 or account holder has.

14 Also, you know, given the fact
15 that the sixteenth affirmative defense is in
16 there, that that's what generates their
17 entitlement to have these records. But for the
18 sixteenth affirmative defense, I would agree
19 with you it's none of the Trustee's business.
20 But having raised that defense, I don't think
21 you can then draw too fine a line as to what
22 they get.

23 MS. CHAITMAN: Okay. If we can
24 now move to the third order, which involves the
25 Wilenitz issues --

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1 ARBITRATOR MAAS: Sure. Hang on
2 just a second. Let me get to that one. Yes.

3 MS. CHAITMAN: I have a whole
4 bunch of questions on this one.

5 On paragraph 4 you wrote by
6 December 20th the Trustee shall indicate how
7 long it will take to make a good faith
8 determination as to whether there are any
9 trading records for the years prior to 1992.

10 Mr. Jacobs sent you a letter --

11 ARBITRATOR MAAS: Right.

12 MS. CHAITMAN: -- and he did
13 produce some records, but it's not -- there
14 hasn't been a representation that it's complete
15 by any means. So --

16 ARBITRATOR MAAS: And as I recall,
17 they were restoring numerous microphone records
18 in an effort to determine whether there is
19 anything else, and perhaps were doing other
20 things, and also were giving you an index as to
21 what files exist.

22 I can't very well require them to
23 go through every box that existed in the
24 storeroom. So people have to make educated
25 guesses.

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1 I don't disagree with you that
2 there was some waffling about how long it will
3 take. But under the circumstances I think the
4 Trustee has probably done as best as he could do
5 at this point.

6 As we move forward and as time
7 goes on, if you're not getting materials and you
8 think there are materials, or you think their
9 search has not been sufficiently robust, we can
10 discuss that.

11 MS. CHAITMAN: Well, the -- I
12 think what I would want is a representation that
13 what has been made available to us is everything
14 that was made available to Dubinsky, their
15 expert upon which they are relying. And I
16 anticipate that Trustee's counsel will say that
17 that should be reserved for expert discovery,
18 but it can't be because these are core documents
19 that we need and we may need to take third party
20 discovery with respect to this.

21 So, you know, Dubinsky had access
22 to a massive amount of trading records from the
23 1970s and 1980s, and what Mr. Jacobs has
24 produced to date is only a very, very small
25 percentage of that.

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1 ARBITRATOR MAAS: That's a fair
2 question.

3 Mr. Jacobs?

4 MR. JACOBS: Hi, Judge Maas. I
5 can most certainly address that. There isn't
6 anything that Mr. -- in terms of Ms. Chaitman's
7 specific inquiry regarding trading records,
8 there aren't any records that Mr. Dubinsky had
9 access to at any point in time that Ms. Chaitman
10 also doesn't have access to both historically
11 and contemporaneously with anything new that
12 we're finding.

13 So what we've done, as I explained
14 in my letter from December, is those 93
15 additional reports that we found and are 95
16 total from the '80s, two already were in the
17 data room, have been now put in the data room,
18 and they also have been provided simultaneously
19 to Mr. Dubinsky at the same time Ms. Chaitman
20 got them.

21 With respect to any additional
22 types of reports from those earlier time periods
23 that we can find from our microfilm restoration
24 project, those will also, as quickly as humanly
25 possible, be put in the data room in the folder

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1 that I specified in the letter. Ms. Chaitman
2 has access to that. She will have access to
3 those documents at the same time Mr. Dubinsky or
4 anyone else has access to them. There is
5 nothing -- sorry --

6 ARBITRATOR MAAS: Is there a
7 procedure by which Ms. Chaitman will know that
8 documents have been added?

9 MR. JACOBS: Yes. But as I
10 explained in my December letter, we intend to
11 both add those to the data room and produce them
12 on either a hard drive or disk simultaneously to
13 Ms. Chaitman. So she'll get a production letter
14 notifying her with the media she can load into
15 her own review platform, and also an update that
16 those documents have also been added to the data
17 room, so she can access them that way as well.

18 We are working on the restoration
19 of that microfilm as fast as humanly possible.
20 I believe I said in my December letter we
21 anticipated about four to six additional weeks.
22 I think we're still looking at about that time
23 frame.

24 The reason why, unfortunately, I
25 cannot commit to a date certain is that, as you

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1 can imagine, there are -- there is a whole host
2 of technological issues in connection with this
3 restoration over which I have absolutely no
4 control.

5 So I can let you know that we will
6 be sending an additional update letter to Your
7 Honor and to Ms. Chaitman hopefully within the
8 next seven business days or so with I think what
9 will be an additional production of several
10 additional reports we have since had restored
11 from microfilm since the date of my last letter.

12 The reason why I'm not able to
13 provide those today is because there are all
14 kinds of technological issues with the data
15 that's being restored from the microfilm. We
16 get the raw data restored, but then it has to
17 be -- we have to review it and we have to
18 unitize it. We have to make determinations as
19 to where documents start and where they end. We
20 have to make sure that it's complete. We have
21 to quality control check it. We have to make
22 sure that dates or pages aren't skipped. It's a
23 tedious, time-intensive project that's done by
24 our vendor for the most part, subject to our
25 quality control, and, unfortunately, it just

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1 takes time.

2 So we will continue to work
3 through that restoration as quickly as humanly
4 possible. And as soon as we are able to
5 conclusively identify anything that Ms. Chaitman
6 has indicated she's interested in, we will
7 produce it to her and add it to the data room.

8 And for the sake of all
9 transparency, so there is no doubt, we will
10 continue to provide Your Honor with -- we will
11 continue to copy Your Honor on those update
12 letters until we're done.

13 ARBITRATOR MAAS: The only thing
14 that you said that I didn't understand is when
15 you said the material has to be unitized, I'm
16 not sure what you mean.

17 MR. JACOBS: Yeah. Sorry.
18 That's -- so, for ESI, electronically-stored
19 information, the metadata of documents that are
20 created, sent, received and modified over time,
21 the metadata associated with those documents
22 tells you specifically where the documents start
23 and where it ends, if it's multiple pages,
24 right.

25 For microfilm, that data the way

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1 it's restored, it's coming back to us, we don't
2 have the benefit of that -- of that metadata
3 because it's microfilm that's being restored,
4 and by whatever technological process, it
5 doesn't -- we don't receive the benefit of that.
6 So we have to do that -- we have to review all
7 of the data manually and code it for the start
8 and end marker for each individual document and
9 usually that we can tell because they are all --
10 like a report had a date, for example. So
11 that's the unitization issue that I was
12 referring to.

13 ARBITRATOR MAAS: I assumed that's
14 what it was. I just wanted to make certain.

15 MR. JACOBS: Yeah. So we have --
16 we did receive additional reels of microfilm
17 restored since I wrote my letter in December.
18 And I believe, through just preliminary
19 searches, that it does contain some additional
20 NSC reports of stock trading conducted by House
21 5 prior to 1992. And the reason why it hasn't
22 been produced yet is because by searching it,
23 when I do a search to try to extract that
24 material that's relevant, I'm getting back --
25 I'm getting -- the search results aren't

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1 yielding full reports because the documents
2 haven't been unitized and they haven't been
3 coded yet and put into a format that can be --
4 that where we can make sure that the data is all
5 complete and accurate for production. So that's
6 what's happening now. As soon as that is
7 complete, it will be produced.

8 ARBITRATOR MAAS: Ms. Chaitman.

9 MS. CHAITMAN: I would just like
10 something clarified, Ted --

11 MR. JACOBS: Sure.

12 MS. CHAITMAN: -- are you saying
13 that these are documents that Dubinsky has never
14 reviewed or these are the documents that he did
15 review?

16 MR. JACOBS: This is microfilm
17 that has never been restored. The reels that
18 are out, that we sent out to our vendor that I
19 mentioned, I believe there are a little more
20 than a hundred, I just need to check my notes
21 and my letter, that's -- that's data that has
22 never been restored. So nobody has seen this
23 material until we see it and produce it -- until
24 we get it and produce it.

25 ARBITRATOR MAAS: Including, in

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1 particular, Mr. Dubinsky.

2 MR. JACOBS: That's correct.

3 Now, the original production of
4 the 95 records, we didn't -- did come from -- I
5 believe they did come from microfilm, but
6 microfilm that had already been restored some
7 time ago, and that was in a database.

8 Mr. Dubinsky had seen two of those reports and,
9 in fact, they are referenced -- they are on his
10 documents considered list. That's why they were
11 in the data room and they have been in the data
12 room for some number of years.

13 The additional 93 that we produced
14 were not on Mr. Dubinsky's considered list, but
15 they were existing in our database and we found
16 those by search terms, as I mentioned in my
17 letter, and those I don't believe Mr. Dubinsky
18 has ever seen, but they now have been added to
19 the data room and he has them now --

20 MS. CHAITMAN: So is it -- excuse
21 me, but is it correct to say that if Dubinsky
22 had reviewed any trading records, they would
23 have been included in the data room before we
24 added these new things?

25 MR. JACOBS: Anything that

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1 Mr. Dubinsky considered in connection with his
2 report is in the data room, and the only
3 exception to that are certain structured data
4 that we disclosed in the data room manual that
5 isn't amenable to inclusion in the data room,
6 and we can make that available by other means.

7 But any -- all of the documents
8 that Mr. Dubinsky considered with his report as
9 it exists today are in the data room. So if
10 you -- if you're familiar with his report as
11 we've produced it, you'll know that he
12 references a lot of documents that he relies
13 upon by Bates number throughout his report, and
14 then there are voluminous appendices at the end
15 of his report that I believe are, in some
16 instances, hundreds of pages long that list by
17 Bates number tens of thousands of additional
18 documents he considered. Every single one of
19 those, to the extent technologically feasible,
20 has been put in the data room.

21 ARBITRATOR MAAS: Anything else on
22 that, Ms. Chaitman?

23 MS. CHAITMAN: So, okay, but when
24 you say technologically feasible, so you mean
25 that excluded the documents that you're now

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1 putting into the data room? Is that -- I just
2 want to understand what we're dealing with.

3 MR. JACOBS: Okay. No, I'm happy
4 to explain it, and it's a little confusing. I
5 apologize if I'm not being clear.

6 So the micro -- the 100 plus reels
7 of microfilm that I mentioned in my December
8 letter that we've sent out for processing, none
9 of that data, none of that microfilm has ever
10 been processed before. So none of that material
11 that we'll be producing starting now going
12 forward, to the extent it's relevant, is in the
13 data room or has ever been viewed by us or
14 Mr. Dubinsky or any litigant or anyone else in
15 connection with our adversary proceedings.

16 Mr. Dubinsky will be getting that,
17 if we make it available to him, at the same time
18 we produce it to you.

19 With respect to the 95 reports
20 that were the subject of -- that we produced in
21 connection with that December letter, two of
22 those have been considered by Mr. Dubinsky and
23 provided to him. They are identified in the
24 appendix of his documents considered. They were
25 in the data room and have been for a number of

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1 years.

2 The additional 93 that we produced
3 were in the database of microfilm we had
4 previously restored, but they, to my knowledge,
5 have not been considered by Mr. Dubinsky in
6 connection with his report.

7 ARBITRATOR MAAS: And just so the
8 record is clear, Mr. Jacobs, your letter talks
9 about having engaged the vendor, the process and
10 the additional 167 reels, that data is the
11 number you're talking about?

12 MR. JACOBS: Correct. So those
13 167 reels have not been previously processed.
14 So Mr. Dubinsky doesn't have those documents. I
15 don't have those documents until they are
16 processed. And if there is any relevant
17 material reflecting securities trading at BLMIS
18 from any point in time, we will add it to the
19 data room and we will produce it and send the
20 specific production letter to Ms. Chaitman
21 identifying those records that will be produced.

22 MS. CHAITMAN: When you say
23 relevant, what is -- what is the screen there?
24 What would you not be putting on in the data
25 room?

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1 MR. JACOBS: We are -- we are
2 right now using the search terms that I
3 disclosed in my letter in December to identify
4 any records or reports that reflect securities
5 trades having been conducted historically at
6 BLMIS for any point in time.

7 MS. CHAITMAN: Okay. So when you
8 say relevant, I mean, you're not saying we're
9 not putting -- we're not putting in any evidence
10 of these trades, you're not distinguishing among
11 trades, right? I mean, you're putting all the
12 trading records in.

13 MR. JACOBS: That's correct, yeah.
14 If it's a trading record, if it's a BLMIS
15 trading record of securities having been traded,
16 we will produce it.

17 MS. CHAITMAN: Okay. Okay. So,
18 you know, on that I guess the only concern I
19 have, and I'm not sure that it's something that,
20 Judge, you ought to consider right now, but we
21 have scheduling orders in every case for fact
22 discovery. And, obviously, this is -- this is a
23 major new area of discovery which we will need
24 time to analyze, and the present fact discovery
25 orders do not -- did not contemplate this whole

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1 new body of discovery.

2 ARBITRATOR MAAS: Well then we'll
3 have something -- well, let me not interject
4 before the Trustee responds.

5 MR. JACOBS: Well, Helen, as you
6 know, we currently have been automatically
7 extending all such deadlines in all cases
8 pending, you know, specifically the Madoff
9 deposition pursuant to Judge Bernstein's
10 direction. And we, you know, we will continue
11 to work with you on a case-by-case basis to
12 contemplate an extension in any case that's
13 needed.

14 But I just want to be clear for
15 Judge Maas' benefit that this is not a whole new
16 body of discovery. These are the exact same
17 type of House 5 trading reports that BLMIS --
18 for trades that BLMIS' market making business
19 were conducting, that, to our knowledge, have
20 nothing to do with House 17 or any of the
21 investment advisory customers at any point in
22 time.

23 And, Judge Maas, I also would just
24 like to make clear that Ms. Chaitman has had for
25 years now all of those records for 2002 to 2008

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1 and has not been able to point to any -- any
2 example of an actual securities trade having
3 been conducted for an IA customer. And I -- we
4 don't believe that, no matter what is contained
5 on this microfilm, any additional securities
6 trading reports from any additional point in
7 time is going to change that.

8 So this isn't a whole new area of
9 discovery that's being opened up here. This is
10 an argument that Ms. Chaitman has been making
11 for quite some time that she has been quite
12 unsuccessful in demonstrating, so --

13 ARBITRATOR MAAS: I understand, I
14 understand the debate. We could continue to
15 debate it, but I think Ms. Chaitman needs to
16 look at what you produce and we'll worry about
17 discovery deadlines or reopening discovery
18 deadlines, when I say "we," either Judge
19 Bernstein or me depending on the case, as we
20 move forward --

21 MR. JACOBS: Absolutely.

22 ARBITRATOR MAAS: -- speculate.

23 MR. JACOBS: Yeah, and we will
24 work with Ms. Chaitman to do that.

25 And also, you know, we've also had

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1 conversations with Judge Bernstein about this,
2 and I think that the parties have been wanting
3 the benefit of the conclusion of Mr. Madoff's
4 testimony, and there is going to be a second
5 date scheduled is my understanding, I believe,
6 Helen, tell me if I'm wrong, but we're aiming
7 for some point in February. And I think the
8 parties will be before Judge Bernstein after
9 that to discuss whether there should be or will
10 be any additional third party discovery to
11 follow up on any testimony that Mr. Madoff
12 provides. And, you know, certainly we will be
13 happy to extend case management orders until the
14 completion of that at a minimum.

15 So I don't think that we're at a
16 point right now where we have any disagreement
17 over that.

18 ARBITRATOR MAAS: I just have a
19 question. Is it a second day of Madoff or a
20 third day?

21 MS. CHAITMAN: Let me explain,
22 Your Honor, the -- what Judge Bernstein did was
23 he set up what are called day one topics, there
24 is a whole list of topics that are permitted
25 subjects for questioning Mr. Madoff on the first

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1 day.

2 After seven or eight hours,
3 Mr. Sheehan, on behalf of the Trustee, and I
4 agreed that I had not completed my examination
5 of Mr. Madoff with respect to the day one
6 topics, so -- of course, he didn't have any
7 opportunity to cross. So we're continuing -- I
8 think Mr. Sheehan said he was going to write a
9 letter to Judge Bernstein explaining -- I
10 haven't seen the letter yet -- but we are going
11 to continue Mr. Madoff's deposition in February
12 with respect to the day one topics.

13 The procedure that the judge set
14 in place is that after we complete the day one
15 topics, we would go back to him and talk about
16 what future questioning we would like to have of
17 Mr. Madoff.

18 But, realistically, the day one
19 topics are very, very broad and I don't -- I
20 don't even think we're going to finish them in
21 another day. But I think that Mr. Sheehan will
22 have, I'm sure, a full day of cross, and I have
23 another full day of -- of questions. So we just
24 have to play it by ear as we go.

25 ARBITRATOR MAAS: And the only

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1 reason I asked is I was under the impression
2 that that second day on the day one topics had
3 been scheduled and would have occurred by now.

4 MR. JACOBS: No, Your Honor. I'm
5 not sure we agree with the time periods that
6 Ms. Chaitman set forth. But I think we do agree
7 that there will be, at a minimum, another day of
8 testimony, and we do have a right to cross and
9 we haven't yet had that opportunity. But it has
10 not been -- it has not yet currently been
11 scheduled.

12 ARBITRATOR MAAS: Okay. What's
13 next, Ms. Chaitman?

14 MS. CHAITMAN: Okay. So in
15 paragraph 5 it says the Trustee shall respond to
16 request numbers 2 and 3 solely with respect to
17 errors in the account statements, the records of
18 clients of Chaitman of which the Trustee
19 presently is aware and which have not been
20 previously disclosed to that firm.

21 There is no deadline for that and
22 I just wanted to have a time frame.

23 MR. JACOBS: I can, hopefully,
24 solve that problem. We are preparing amended
25 responses to that request right now which I hope

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1 to have served within a week, probably sooner.

2 But we will -- we will amend our answers to
3 those requests consistent with the judge's
4 order, and if a week's time is acceptable to
5 you, Helen, we'll have it to you by then.

6 MS. CHAITMAN: Yeah, that's
7 perfect. That's perfect. Okay.

8 So now on paragraph number 6,
9 which is request number 4, it says, "This
10 request concerns profit withdrawal transactions
11 for which there is no proof that the customer
12 initiated the request. Insofar as clients of
13 Chaitman are concerned, the information either
14 has been produced or will be produced at the
15 expert discovery stage."

16 The problem with that, Judge, is
17 this. If we don't get core discovery until the
18 expert discovery stage, it doesn't give us the
19 ability to take any other discovery we may need,
20 because in the expert discovery stage we're
21 limited in what we can do.

22 So it seems to me that this is
23 such a fundamental issue. And just to put it in
24 context, Judge, I just want to explain this to
25 you, I'm sure you understand it, but, you know,

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1 Mr. Jacobs just said that we haven't pointed to
2 one situation since 2002 where BLMIS indicated a
3 trade for the investment advisory customers and
4 it actually made that trade.

5 We don't contend that securities
6 were purchased for the IA customers from 2002
7 on. In fact, Mr. Madoff has said that beginning
8 at some point in 1992, he stopped buying -- he
9 started a new trading strategy and in that
10 strategy he never bought the securities that
11 were shown on the statements --

12 MR. JACOBS: Well, actually,
13 Helen, he's now revised that to 1987, but, you
14 know, we can fight about that later.

15 MS. CHAITMAN: Well, I'm not --
16 I'm not aware of where he said that. In his
17 deposition he said 1992, but --

18 MR. JACOBS: And he said 1987 the
19 second time.

20 MS. CHAITMAN: Okay. I'm not
21 going to argue with you --

22 ARBITRATOR MAAS: Wait, let me
23 interrupt for a second because, Mr. Jacobs, you
24 just talked about the second time, and that's
25 what I was trying to understand. I read one day

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1 of the deposition. He was deposed for a second
2 day?

3 MR. JACOBS: Well, the first -- by
4 the first time I meant Ms. Chaitman's deposition
5 that she took in connection with the profit
6 withdrawal proceeding, which was some months
7 ago, and then I guess his second deposition was
8 the first day that happened last month to which
9 we're now -- to which there will be a
10 continuation to be scheduled.

11 ARBITRATOR MAAS: Okay. And the
12 Madoff deposition that I read was the first of
13 those. Correct?

14 MR. JACOBS: Correct, yes, yes.

15 ARBITRATOR MAAS: All right. Does
16 it make sense for me to read the other
17 transcript? I didn't want to run the meter if
18 it's irrelevant to what I'm going to be doing --

19 MR. JACOBS: Well, our view, Your
20 Honor, is that it's irrelevant to the discovery
21 disputes that are pending in these -- in these
22 current applications. I mean, Ms. Chaitman has
23 made it an issue in connection with the stock
24 trading reports, but that was never properly
25 before Your Honor. So I really don't see it has

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1 any relevance to the work that we're doing now.

2 ARBITRATOR MAAS: Okay. That's
3 fine.

4 MS. CHAITMAN: Well, Your Honor,
5 if I can just finish where I started before, I
6 think it's important for you to understand, and
7 I would strongly disagree with Ted's position
8 that it's not relevant, the vast majority of my
9 clients were customers of Madoff in the 1980s
10 and 19 -- and into 1992.

11 In calculating their clawback
12 exposure, the Trustee has taken the position
13 that they are not entitled to any appreciation
14 on their investment from, say, 1980 on.

15 What Mr. Madoff's testimony very
16 emphatically was is that there was no fraud of
17 the investment advisory customers prior to the
18 split-strike conversion, which began in 1992.

19 What that means is that for a lot
20 of my clients the cases will have to be
21 dismissed, because if, in fact, the Court finds
22 that there was no fraud of the investment
23 advisory customers prior to 1992, then they have
24 to be credited with their account balances as
25 of, let's say, 12/31/91. And if you do that, in

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1 many cases the clawback exposure will be
2 eliminated completely.

3 So this is a very important
4 factual issue for a great many of my clients and
5 that's why we're focusing on it.

6 So, you know, I would say that you
7 should read Mr. Madoff's deposition. I think
8 that Ted has misunderstood what he said, and I
9 think that you should read it yourself, because
10 the testimony very clearly was that he purchased
11 securities for every investment advisory
12 customer prior to the split-strike conversion
13 strategy, which started sometime in 1992.

14 MR. JACOBS: Your Honor, if you
15 would like a copy of the transcript, I'm happy
16 to provide it.

17 I just -- you know, obviously the
18 parties agree that the start date of the fraud
19 is a disputed issue. And I can tell you that
20 beyond Mr. Madoff's very self-serving testimony,
21 there is absolutely no evidence that he was ever
22 running a legitimate business for his IA
23 customers. And even if we were to credit all of
24 the customers' accounts through 1992, the impact
25 on our claims would only be affected in a very

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1 small number of Ms. Chaitman's cases. So it's
2 really not this make or break issue that she
3 makes it out to be. And even if she prevails,
4 it's not going to significantly affect the
5 majority of our claims, so --

6 ARBITRATOR MAAS: Why don't you
7 send it to me and I'll skim it.

8 MR. JACOBS: Okay.

9 MS. CHAITMAN: Okay. So --

10 ARBITRATOR MAAS: But he
11 interrupted you, you were on discovery request 4.

12 MS. CHAITMAN: Exactly. So
13 basically what I'm asking, Judge, is that if
14 there are documents responsive to this request,
15 that we get them during the fact discovery
16 period, and, most importantly, while I have
17 access to Mr. Madoff. Because if I don't get
18 this until the expert discovery stage, then I
19 can't go back to Mr. Madoff and ask him about it.

20 MR. JACOBS: Your Honor, I think I
21 can address Ms. Chaitman's concern.

22 Helen, are you talking about --
23 are we back to the PW-related specific
24 documents --

25 MS. CHAITMAN: Yes.

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1 MR. JACOBS: -- that you're
2 concerned about?

3 So I'm not aware of any -- okay.

4 So as part of our initial disclosure or
5 production, which we make before you even served
6 us with a request in fact discovery, we include
7 all of the underlying documentations that our
8 experts will likely review and rely upon in
9 connection with their report, including on PW
10 specific issues.

11 So there is nothing that I believe
12 that's going to appear for the first time in
13 connection with the report that you won't
14 already have as part of that initial disclosure
15 production. So you do have everything in every
16 single case regarding those PW transactions in
17 fact discovery. We're not -- we're not
18 withholding any of that material until expert
19 discovery in connection with the disclosure of
20 our report.

21 MS. CHAITMAN: So then you
22 wouldn't object to this paragraph being revised
23 to reflect what you just said?

24 MR. JACOBS: I don't think --
25 well, let me look at the paragraph.

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1 Well, it depends upon -- I agree
2 with the paragraph as constructed, because our
3 objection to your original request was that it
4 wasn't limited to defendant-specific materials.

5 So your request as drafted was
6 overly broad and burdensome, which was our
7 objection to it, and for that reason I would
8 object to a revision of this paragraph that
9 would -- that would confer upon the Trustee any
10 production obligation beyond documents relevant
11 to the defendants in the case.

12 Moreover, I also -- you know, it
13 might be that -- it might be that because we're
14 talking theoretically about documents and you're
15 not raising, you know, I want to see the
16 customer statements or I want to see the bank
17 transfer documents, we're not talking about a
18 specific category of document, I'm concerned
19 that there may be -- you might have in your mind
20 the type of document that doesn't get, you know,
21 disclosed until the expert identifies it in
22 their report that I'm not thinking of right now,
23 in which case -- just because I can't foresee it
24 or I'm not anticipating it.

25 So if that happens, then it's

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1 perfectly legitimate for us to disclose it in
2 expert discovery and you can serve a request for
3 it and we'll produce it and there is no
4 prejudice to you. So I don't believe that any
5 revision of this paragraph is necessary.

6 But what I am telling you is that
7 we make every effort in fact discovery to
8 produce to you all of the underlying material
9 that we provide to our experts in connection
10 with their reports. But can I sit here and
11 guarantee in every single case that will be 100
12 percent perfect? I can't. I think it will be,
13 but I'm uncomfortable with an order that
14 requires perfection when -- across a hundred
15 cases about theoretical documents that I don't
16 even know what you're referring to right now as
17 we talk.

18 ARBITRATOR MAAS: And basically
19 what Mr. Jacobs just said, he also said at pages
20 194 through 196 of the -- maybe it goes on a
21 little further than that -- of the hearing
22 transcript, which is why I worded it the way
23 that I did, so I'm going to leave that as it is.

24 MS. CHAITMAN: Okay. In paragraph
25 9, which is discovery request number 11, there

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1 is no date by which the Trustee has to give us
2 this information.

3 ARBITRATOR MAAS: Right.

4 MR. JACOBS: Similarly, yes, we
5 will provide -- our plan was to provide, Helen,
6 you with an omnibus amended interrogatory
7 objections and responses that will be applicable
8 to all the cases in your Exhibit A in which you
9 originally served them that will comply with the
10 Judge's order here on all points.

11 So this amendment will be included
12 in the amended responses that I mentioned
13 earlier that we'll provide to you within
14 approximately a week's time.

15 MS. CHAITMAN: And that would be
16 true also for request numbers 15, 16 and 18?

17 MR. HUNT: But, Your Honor, this
18 is Dean Hunt, can I just interject here? Your
19 order relating to our motions to compel said
20 promptly. We have no problem with that. I
21 think the parties can work through these things
22 promptly, and if there's an undue delay, we, of
23 course, will let you know.

24 But we certainly didn't put any
25 limits on Ms. Chaitman, understanding her

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1 workload and so forth, and, you know, she's
2 trying to do that to us and it doesn't seem --

3 ARBITRATOR MAAS: I contemplated
4 putting in some time period and then decided it
5 would be better to encourage people to move
6 promptly and --

7 MR. HUNT: I agree with that. I
8 think as officers of the court we have an
9 obligation to proceed promptly under your order
10 and we have every intention of doing so and we
11 expect that Ms. Chaitman will do so as well.

12 MS. CHAITMAN: Well, is that a
13 mutual rule then, that there is no specific
14 date, but it's as promptly as we can do it?

15 ARBITRATOR MAAS: Let me answer
16 that. The answer is yes.

17 MS. CHAITMAN: Okay. Okay. That
18 resolves all of the issues that I had with the
19 three orders that were entered.

20 ARBITRATOR MAAS: Okay. I guess
21 one concern I have is to the extent that there's
22 not a broad stipulation or a stipulation as
23 broad as set forth in what -- in paragraph A2 in
24 the Train Klan, et al. order, then it strikes me
25 that there is sort of a binary approach to this.

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1 The need not to answer interrogatories as
2 discussed in paragraph A3 of that order is
3 premised on the stipulation or something
4 approaching it.

5 You sent a fairly detailed letter
6 that indicated that I think it was basically
7 Gordon and Train Klan that could agree to that,
8 but not others, and I suggested that the parties
9 need to confer, in paragraph A4 I suggested that
10 the parties need to confer and see the extent to
11 which there can be stipulations and those
12 stipulations obviate the need for the discovery
13 that otherwise would be essentially available
14 under paragraph 3. So that's something that
15 needs to occur.

16 I don't want to throw a monkey
17 wrench in here, but I just want to highlight
18 that so that there is some discussion among the
19 parties about that, and in the first instance it
20 probably should deal with the nine or so
21 defendants we were dealing with. But I suppose
22 eventually, since I did say all my rulings
23 should be applied insofar as possible in other
24 adversary proceedings, I guess it would have to
25 be expanded potentially to the others. So I

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1 just wanted to note that that needs to occur.

2 There was also the issue of the
3 Train Klan partnership records. And you've been
4 asking about dates when the Trustee will produce
5 things. Can you tell the Trustee when those
6 materials will be produced, if they exist?

7 MS. CHAITMAN: They exist, and I
8 have them from the client. I received them
9 yesterday and they're going out either today or
10 tomorrow.

11 ARBITRATOR MAAS: Okay. Anything
12 else we ought to take up today?

13 There is -- obviously it wasn't on
14 the agenda, but I've received the dueling
15 letters about the Leonard Miller estate. I,
16 frankly, haven't yet read or re-reviewed the
17 complaint in that action --

18 MR. HUNT: I think that --

19 ARBITRATOR MAAS: -- the view that
20 this is a problem for Judge Bernstein and the
21 motion to dismiss. I gather that the Trustee's
22 position is this is something I should be
23 dealing with as a discovery issue?

24 MR. HUNT: I think Ms. Chaitman's
25 position on that was that she was going to go

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1 ahead and answer the discovery, and then I think
2 she even did answer some of it, so thank you for
3 that, and then deal with the motion to dismiss
4 or motion for summary judgment or whatever with
5 the trial court.

6 So I don't see anything in front
7 of you right now with respect to that.

8 ARBITRATOR MAAS: Okay.

9 MR. HUNT: We do have --

10 ARBITRATOR MAAS: Ms. Chaitman?

11 MS. CHAITMAN: Yeah, I think I
12 have to make a motion to dismiss.

13 ARBITRATOR MAAS: Okay. Then
14 that's fine.

15 Anything else we ought to take up
16 today?

17 MR. HUNT: Yes, Your Honor. I
18 agree with you that with the exception of
19 Gordon, which I'm not clear Ms. Chaitman has
20 stipulated for as she still says that they can't
21 agree to the dates of deposits and withdrawals
22 in paragraphs 1 through 3, I'm not sure that
23 we're going to get a stipulation on Gordon.
24 We'd like to clear that up.

25 And then for the depositions that

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1 we had set and have been objected to, we'd like
2 to go ahead and just get clearance for working
3 with Ms. Chaitman to get those dates nailed
4 down.

5 MS. CHAITMAN: Well, that's the
6 one thing that hasn't been ruled on, Your Honor.
7 We had moved for a protective order with respect
8 to, obviously, as I explained to you, we have
9 been going forward with a lot of the
10 depositions, but I would move for a protective
11 order with respect to the people where they
12 either have conceded the material facts or they
13 have no personal knowledge because the account
14 belonged to a deceased spouse or a trust or
15 whatever, and that's the one motion you haven't
16 ruled on yet.

17 ARBITRATOR MAAS: Well, I guess
18 that's correct. When you say they've conceded
19 Exhibit B, there is lots of caveats to that, and
20 they certainly haven't, as your letter explains,
21 they haven't agreed to the paragraph A2
22 stipulation, potentially with the exception of
23 Gordon, and even that's not wholly clear. So I
24 will rule on that in the next few days.

25 But I have to tell you, in all

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1 likelihood, I will allow those depositions
2 subject, obviously, to restrictions in terms of
3 the amount of time that those depositions will
4 take.

5 Is there any reason why each of
6 those depositions cannot be accomplished in four
7 hours rather than seven?

8 MS. CHAITMAN: Well, they've have
9 been taking -- they have been taking between two
10 and three hours as it is. So, I mean, I can't
11 conceive of why they would take four to seven
12 hours, but --

13 MR. HUNT: Your Honor, I think
14 what I would agree to on that is that we will
15 limit to four hours of on-the-record time
16 subject to, you know, if it goes long, longer,
17 and the only reason I can see that it would go
18 longer is if Ms. Chaitman makes long speaking
19 objections and things of that nature, which
20 we've encountered in the past, that we could
21 give you a --

22 ARBITRATOR MAAS: -- words that
23 say unless -- unless Judge Bernstein or I
24 otherwise direct.

25 MR. HUNT: That would be great and

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1 we're comfortable with that, and, you know what,
2 with respect to you directing it, we might just
3 give you a call that day. I don't foresee that.
4 But if it is -- and with travel and have the
5 witness there and so forth, would you be okay
6 with us trying to track you down for that?

7 ARBITRATOR MAAS: Sure. And, in
8 fact, let me give counsel my cell phone number
9 since I'm a bit of a moving target. It's
10 XXX-XXX-XXXX, but I'd ask that the court
11 reporter just put a space in the transcript.

12 MR. HUNT: We agree with that.
13 Okay. That's fine. We can do that in four
14 hours on the record. We've done it repeatedly
15 in less time than that.

16 ARBITRATOR MAAS: Okay. But let's
17 not leave Gordon hanging out there. Is it
18 possible to resolve Gordon? I take it we're
19 agreed based on the stipulation as revised that
20 Train Klan -- well, and assuming the partnership
21 documents, such as they are received, that Train
22 Klan will not be deposed?

23 MR. HUNT: We don't have a
24 deposition notice out for Train Klan.

25 ARBITRATOR MAAS: Okay.

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1 MR. HUNT: So the only one of the
2 two that we're talking about here is Gordon.

3 ARBITRATOR MAAS: And I'm trying
4 to in my pile of papers search for that letter.
5 Yes, let me come up with it.

6 Well, I think, Ms. Chaitman, if I
7 understand your letter, you're agreeing to
8 withdraw affirmative defenses 20, 27, 29 and 46
9 for Gordon?

10 MS. CHAITMAN: No, that is not
11 correct. I need to pull up that letter, Judge,
12 but that's not correct. Hold on one second.

13 ARBITRATOR MAAS: Okay.

14 MS. CHAITMAN: Just to speed me
15 along, I have the letter now. Which paragraph
16 were you --

17 ARBITRATOR MAAS: Well, I'm in
18 paragraph 4 on page 3 of your letter --

19 MS. CHAITMAN: Okay.

20 ARBITRATOR MAAS: -- after you
21 recite each of those four affirmative defenses,
22 you say it's not applicable to Gordon.

23 MS. CHAITMAN: Yes, I've put
24 Gordon and Train Klan in the same category.

25 ARBITRATOR MAAS: Okay. So then

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1 as to Gordon there should be no need for a
2 deposition.

3 MR. HUNT: It does say on page 2
4 of her letter that none of her clients have
5 admitted to the precise dates of the deposits
6 and withdrawals; that the Trustee has
7 manipulated facts. The stipulation requires
8 them to stipulate to columns 1 through 5, and
9 what she's saying is they'll stipulate to 4 and
10 5. So I just want to clarify that Gordon
11 stipulates to columns 1 through 5.

12 MS. CHAITMAN: No, because, again,
13 this is an area of proof that the Trustee has a
14 burden of, and, you know, it makes a difference
15 because the Trustee can only recover withdrawals
16 taken out in the last two years.

17 MR. HUNT: We agree that that's
18 our burden and that discovery is necessary on it
19 if you won't stipulate to it.

20 MS. CHAITMAN: Well, okay. The
21 point is that Edyne Gordon, who is in her
22 eighties and a widow, had nothing to do with the
23 account. So whether -- whether the check was
24 dated before the two-year period or cashed
25 before the two-year period is a legal argument

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1 based on the evidence. It's not something that
2 she's going to be able to elucidate. She can't
3 possibly have any testimony relevant to that.
4 These are issues that the judge is going to have
5 to determine based on the evidence.

6 You know, the issue is what was
7 the date that Madoff showed the withdrawal, what
8 was the date that the bank actually cleared the
9 withdrawal, and then there has to be a legal
10 interpretation of when that withdrawal occurred
11 as a matter of law. Was it the date that Madoff
12 charged the account? Was it the date that the
13 check was credited to Madoff's account at
14 JPMorgan Chase?

15 I mean, these are legal issues.
16 It's not something that Edyne Gordon, an 87-year
17 old widow, is going to be able to give relevant
18 testimony on.

19 MR. HUNT: We disagree.

20 ARBITRATOR MAAS: I guess, though,
21 the net effect of that is that I'm going to
22 allow a deposition of four hours or less, and if
23 you're correct, it will probably be a lot less
24 of Ms. Gordon, because you can't have it both
25 ways. If there's not a stipulation as to

1 columns 1 through 5 and, by way of example, if
2 there is the potential for a dispute as to the
3 date, the Trustee at a minimum is entitled to
4 take a deposition and say what information do
5 you have to suggest that these dates are
6 inaccurate and get the concession if it's
7 accurate that Ms. Gordon doesn't have any
8 information.

13 Anything else from anyone?

14 MR. HUNT: Nothing from us, Your
15 Honor.

16 ARBITRATOR MAAS: Ms. Chaitman?

17 MS. CHAITMAN: I have nothing
18 further.

19 ARBITRATOR MAAS: Okay. Thank
20 you, all. Have a good day and a good weekend.
21 Take care.

22 MR. HUNT: Thank you, Your Honor.
23 We appreciate it.

24 MS. CHAITMAN: Thank you.

25 (Time noted: 12:11 p.m.)

25 (Time noted: 12:11 p.m.)

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1

CERTIFICATE

2

3 I, MONIQUE VOUTHOURIS, a Notary

4 Public of the States of New York and New Jersey,

5 and Certified Court Reporter of the State of New

6 Jersey, License No. X100834, do hereby certify

7 that the foregoing is a true and accurate

8 transcript of the telephone conference as taken

9 stenographically by and before me on the date

10 hereinbefore set forth.

11 I DO FURTHER CERTIFY that I am

12 neither a relative nor employee nor attorney nor

13 counsel of any of the parties to this action,

14 and that I am neither a relative nor employee of

15 such attorney or counsel, and that I am not

16 financially interested in the action.

17

18



19

20 Notary Public of the State of New York

21 My Commission expires December 1, 2019

22

23

24 Dated: January 6, 2017

25

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